

The Honorable Michelle L. Peterson

Noted for Friday, October 7, 2022

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

NANNETTE BASA,

Plaintiff,

v.

BRAND SHARED SERVICES, LLC,

Defendant.

No. 2:21-cv-00754-MLP

DECLARATION OF ALEX J. HIGGINS  
IN SUPPORT OF PLAINTIFF'S MOTION  
FOR SANCTIONS

I, Alex J. Higgins, am one of the attorneys for the plaintiff in the above-entitled matter. I am over the age of 18 and am competent to testify regarding the matters discussed below. I make this declaration based upon personal knowledge. I swear that the following is true and correct under the penalty of perjury.

1. Brand has asserted various shifting reasons for selecting my client layoff – primarily that Ms. Basa said that she was not interested in doing recruiting. In its responses to our first set of discovery, Brand provided a sworn answer that Plaintiff turned down an offer to work in recruiting positions that were filled by Nicole Norris and Ryan Wilson. Brand has not produced a single document supporting its contention that Ms. Basa turned down work as a recruiter; in fact, she continued to do recruiting work throughout her employment. Brand further claimed that Plaintiff was working on a special project and that she was only interested in focusing on that.

1           2.       On October 28, 2021, we sent our first set of requests with only a modest set of  
2 information requested. Among other items, we asked for documents relating to Brand’s  
3 “process for determining which employees were retained and which were laid off during  
4 reductions in force”. When Brand finally produced some documents two-and-a-half months  
5 after receiving Plaintiff’s requests (January 14, 2022), there were only 66 pages and not a single  
6 email among them. Attached as **Exhibit 1** is Brand’s January 14 set of supplemental answers  
7 (excerpted to include only those relevant to this motion). Brand produced 23 more pages on  
8 January 28, in which only two emails were included (neither of which related to Plaintiff or the  
9 layoff decision). Brand supplemented with additional documents on March 17—bringing the  
10 total number of pages produced to 91. Brand objected to providing all documents about the  
11 December 2020 layoff based on attorney-client privilege (Interrogatory No. 4 and RFP No. 4).  
12 Brand did not, however, provide any privilege log.

13           3.       On April 6, 2022, having received very few documents in response to our first  
14 set of discovery requests, and in an abundance of caution in case the wording of our first set of  
15 requests was not sufficiently clear, we sent a second set of requests to Brand with a broader  
16 request for communications.

17           4.       During discovery, Brand produced almost no documents showing its process for  
18 selecting Plaintiff layoff while retaining less tenured, younger white employees. I asked for a  
19 privilege log several times in discussions with counsel, with an increased emphasis on August  
20 28. (Attached as **Exhibit 2** is that August 28 email that I sent to Brand’s counsel.) Finally, at  
21 the end of the day on Friday, September 9, Brand’s counsel produced a one-page privilege log  
22 that provided almost no detail. A copy of that privilege log is attached as **Exhibit 3**.

23           5.       I responded the next business day that the log was inadequate and asked for more  
24 detail about the communications concerning the December 2020 layoff. With little time  
25 remaining in discovery, we decided to forego asking for a more complete privilege log and only  
26 sought more detail regarding the critical December 2020 layoff. Defense counsel did not  
27

1 respond. After a week, the I sent a reminder to defense counsel. That email chain is attached as  
2 **Exhibit 4.** Defense counsel has not responded to these requests.

3 6. I certify, pursuant to FRCP 37(a)(1), that I have in good faith conferred with  
4 Defense counsel by making specific and written requests for more detail on the privilege log  
5 and followed up in writing a second time without any response. It appears that defense counsel  
6 is trying to “run out the clock” on discovery.

7  
8 SIGNED this 22nd day of September, 2022, at Seattle, Washington.

9 s/Alex J. Higgins  
10 Alex J. Higgins, WSBA No. 20868  
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